



UNITED STATES  
PATENT AND  
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY  
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
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ROYLANCE, ABRAMS, BERDO & GOODMAN, LLP  
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WASHINGTON DC 20036-2680

In re Application of :  
Daniel J. Capon net al :  
Serial No.: 08/238,405 : WITHDRAWAL OF ABANDONMENT  
Filed: May 5, 1994 :  
Attorney Docket No.: 39727 :

This is in response to the petition under 37 CFR 1.181, filed December 13, 2002, requesting withdrawal of abandonment based on timely filing of a reply.

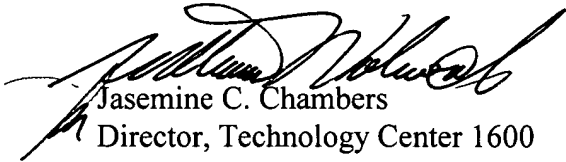
A review of the file history shows that applicants filed a Notice of Appeal on December 26, 2001. On March 26, 2002, applicants filed their Appeal Brief including a one month extension of time and fee therefor. On August 13, 2002, the examiner mailed a Notice of Non-Compliant Appeal Brief to applicants setting a one month period for submission of a corrected Brief. On December 2, 2002, the examiner mailed a Notice of Abandonment to applicants stating that the application was being held as abandoned for failure to reply to the Notice. The Notice under other reasons states that "No response within the extended 1 month/30 day statutory period to the notice of a defective brief (filed 8/13/02) was received. Note the statutory period for filing a brief expired on 7/26/02." Applicants' revised Appeal brief was filed on December 13, 2002, accompanied by a request and fee for a three month extension of time and by this petition which states that the time for filing a revised Brief had not expired as the time for doing so was extendable.

Applicants are correct in their statement. The period set in the Notice was (a) a time period, not a statutory period, for reply; (b) was set as a one month/30 day time period for reply which is extendable under 37 CFR 1.136(a) as it was the longest (and only available) time period for reply. Applicants submission of a new Brief with the petition and extension of time is proper. The Notice of Abandonment was mailed in error and is hereby withdrawn and the application restored to pending status with the mailing of this decision.

Applicants' petition is **GRANTED**.

**The application will be forwarded to the examiner for consideration of the revised Appeal Brief.**

Should there be any questions regarding this decision, please contact William R. Dixon, Jr., by mail addressed to Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230.



Jasmine C. Chambers  
Director, Technology Center 1600